



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2026-2379; FRL-12939-01-R3]

Air Plan Approval; Commonwealth of Virginia; Transfer of Authority and Requests for Certain Public Hearings on Air Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision request submitted by Virginia Department of Environmental Quality (VADEQ) on behalf of the Commonwealth of Virginia. The SIP revisions intend to make some sections of Virginia regulation Revision D22 that became effective on November 23, 2022 federally enforceable. The revisions limit the authority of the Virginia State Air Pollution Control Board (Board) to the issuance of regulations, and transfer the board's existing authority to issue permits, orders, and variances to VADEQ. Additionally, the revisions establish procedures for public comment on pending controversial permits and regulatory changes, and amend certain other procedural requirements related to VADEQ's issuance of permits. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR- 2026-2379 at www.regulations.gov, or via email to he.yongtiam@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information

whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Supplee, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2763. Ms. Supplee can also be reached via electronic mail at supplee.gwendolyn@epa.gov.

SUPPLEMENTARY INFORMATION: On July 1, 2025, VADEQ submitted a revision to Virginia SIP to limit the authority of the Board to issuances of regulations, and transfer the Board's existing authority to issue permits, orders, and variances to VADEQ. Virginia has also requested the EPA to approve the following parts of Virginia Administrative Code (VAC) 9VAC5-80-1255 and 9 VAC5-80-1773 as part of the Virginia SIP. The revision amended procedures for public comments on pending controversial permits. The revision has further defined the "Board" in section 9VAC5-10-20 and has changed "the Board" to "the Department" throughout State regulations codified in 9VAC5 chapters 10, 80, 85, and 170. The revision also made a few administrative changes on cross references in some sections.

I. Background

Section 110(a)(2)(C) of the CAA requires SIPs to have a preconstruction permit program for both major and minor sources. Virginia has a SIP approved state operating permit program (Article 5, State Operating Permit), a minor NSR permit program (Article 6. Permits for New

and Modified Stationary Sources), a prevention of significant deterioration (PSD) permit program (Article 8 Permits—Major Stationary Sources and Major Modifications Located in Prevention of Significant Deterioration Areas), and a Nonattainment area New Source Review (NNSR) permit program (Article 9 Permits—Major Stationary Sources and Major Modifications Located in Nonattainment Areas or the Ozone Transport Region). These permit programs were codified at 9VAC 5–80 to regulate certain modifications and construction of stationary sources in Virginia. The EPA approved these permit programs into Virginia’s SIP to assure the national ambient air quality standards (NAAQS) are achieved and maintained in Virginia. *See* June 27, 2003, (68 FR 38191); August 22, 2016, (81 FR 56508); August 28, 2017, (82 FR 40703).

VADEQ first submitted SIP Revision D22 to the EPA on July 10, 2023. However, the EPA's review observed discrepancies in the VA Code between the initial Revision D22 submittal and what had been previously approved by the EPA into the Virginia SIP. This was likely caused by the fact that Virginia had made several State regulatory amendments to its prior SIP-approved permits program regulations and some of those changes had not yet been approved by the EPA into the Virginia SIP. Subsequently, VADEQ withdrew the original Revision D22 submittal on December 10, 2024. A copy of the letter has been included in the docket for this action. After reconciling the discrepancies between Virginia State regulation Revisions G08 and D22 and the EPA approved SIP, VADEQ resubmitted Revision D22 to the EPA for approval into the Virginia SIP on July 1, 2025. The Virginia regulation Revision D22 was published in the Virginia Register of Regulations on October 24, 2022 and became effective on November 23, 2022.

II. Summary of SIP Revision and the EPA Analysis

A. SIP Revisions

The VADEQ submitted a Virginia SIP revision request to limit the authority of the Board to issuance of regulations, and to transfer the Board’s existing authority to issue permits, orders, and variances to VADEQ. The revision made numerous changes from “the board” to “the

department” throughout State regulations codified in 9VAC5 Chapter 10, Chapter 80, Chapter 85, and Chapter 170 in order to effectuate the transfer of authority. Additionally, the revisions establish the procedures for public comments on pending controversial permits and regulatory changes. Other substantive changes in this revision mainly involve sections related to action on permits and public participation for different permit programs. These include sections in Article 5 permits (State operating permits, section 9VAC5-80-860), Article 6 Permits (minor NSR permit, section 9VAC5-80-1160), Article 8 permits (Major Stationary sources and major modifications located in prevention of significant deterioration areas, sections 9VAC-80-1773 and 9VAC-80-1775), Article 9 permits (Major Stationary sources and major modifications located in nonattainment areas or the Ozone transport region, sections 9VAC5-80-2060 and 9VAC5-80-2070). The revision also removed section 9VAC5-80-1040 (Review and Evaluation of Article) from the SIP as it was repealed in State regulations; it contained outdated requirements that expired in 2001.

In addition, VADEQ’s July 1, 2025 submittal has requested to add sections 9VAC5-80-1255 and 9VAC5-80-1773 to the Virginia SIP. Section 9VAC5-80-1255 (Actions to Combine Permit Terms and Conditions) was submitted as part of Virginia State regulations Revision H05, which was approved by the EPA on August 22, 2016 (81 FR 56508). This provision was omitted in error from the *Federal Register* publication, and this section therefore does not appear in the EPA approved Virginia SIP. With this submittal, VADEQ requests that the EPA correct the omission and incorporate 9VAC5-80-1255 into the Virginia SIP. Additionally, in this revision, VADEQ is requesting to add section 9VAC5-80-1773 (as amended by Revision D22) to the Virginia SIP.

The key changes in the sections related to “Action on permit application” in various Virginia permit programs (9VAC5-80-860, 9VAC5-80-1160, 9VAC 5-80-1773, 9VAC5-80-2060) involve adding a subsection in each of these sections to detail VADEQ’s procedures for issuing a permit or denying an application for a permit (i.e., adding subsection G in 9VAC5-80-

860 and 9VAC5-80-2060, adding subsection H in 9VAC5-80-1160 and 9VAC5-80-1773).

Additionally, VADEQ revised subsection D in section 9VAC5-80-1773 and subsection C in section 9VAC5-80-2060 to transfer authority on respective permit program's permit decision from the board to VADEQ.

The key changes in the sections related to "Public participation" requirements in different permit programs (9VAC5-80-1775 and 9VAC5-80-2070) involve removing instructions in their respective subsections G on how to request the board to directly consider PSD and NNSR permit applications, consistent with the transfer of authority from the Board to VADEQ. In section 9VAC5-80-1775, Virginia revised subsection H to transfer PSD permit authority from the board to VADEQ following process prescribed in 9VAC5-80-1773D. In section 9VAC5-80-2070, Virginia revised subsection H to transfer NNSR permit authority from the board to VADEQ following process prescribed in 9VAC5-80-2060C.

B. EPA Analysis

The minimum requirements for the EPA approval of State or Tribal implementation plans are codified at 40 CFR part 51 subpart I (40 CFR 51.160 through 51.166). Specifically, 40 CFR 51.160 provides requirements on legally enforceable procedures. The regulation at 40 CFR 51.161 requires opportunity for public participation, including public availability of information, 30-day comment period, and prominent advertisement. The regulation at 40 CFR 51.162 requires each State SIP to identify the State or local agency which will be responsible for meeting the requirements of this subpart in each area of the State. This submitted revision is directly related to these requirements, i.e., transferring permitting authority from the Board to the Department (VADEQ), and public participation requirements in Virginia permit programs.

The revisions in sections 9VAC5-80-860 and 9VAC5-80-1160 are related to "Action on permit application" for State Operating Permit and Minor NSR Permit programs. The key changes in these sections involve adding a subsection in each of these sections to detail VADEQ's procedures for issuing a permit or denying an application for a permit. These

revisions are consistent with 40 CFR 51.163 on administrative procedures.

Section 9VAC5-80-1255 establishes general requirements and procedures for permit actions to combine permit terms and conditions. Approving the section into the Virginia SIP is consistent with 40 CFR 51.163 on administrative procedures.

The revisions in sections 9VAC5-80-1773 and 9VAC-80-1775 are related to “Action on permit application” and “Public participation” requirements for PSD permit program, which applies in areas that are in attainment with (or unclassifiable) the NAAQS. The VADEQ is requesting to add section 9VAC5-80-1773 (Action on permit) which describes administrative procedures for the PSD permit program, including timing, review process, and decisions on permit applications. Approving section 9VAC5-80-1773 into the Virginia SIP is consistent with 40 CFR 51.160 through 51.166. Revisions in section 9VAC-80-1775 (Public participation requirements) are consistent with 40 CFR 51.161.

The revisions in sections 9VAC5-80-2060 and 9VAC5-80-2070 are related to “Action on permit application” and “Public participation” requirements for the NNSR permit program, which is applicable in areas that are not in attainment with the NAAQS. The key changes in section 9VAC5-80-2060 involve adding a subsection to detail VADEQ’s procedures for issuing a permit or denying an application for a permit. This revision is consistent with 40 CFR 51.163 on administrative procedures. Revisions in section 9VAC-80-2070 (Public participation requirements) are consistent with 40 CFR 51.161. The revisions in all these sections relating to the permit application decision process meet Federal requirements in 40 CFR 51.160 through 51.166. It also meets requirements in CAA section 173 on air permits for nonattainment areas.

Under CAA section 110(l) provides that a revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The VADEQ SIP submission provided documentation of public participation record of the Virginia rulemaking. The VADEQ SIP submission met the public notice and public hearing requirements. The EPA finds the revisions to 9VAC5–80 sections 860, 1040, 1160, 1255, 1773,

1775, 2060, and 2070 are consistent with CAA section 110(l). None of the revisions interfere with any applicable requirement concerning attainment of any NAAQS nor interfere with reasonable further progress or any other applicable requirement of the CAA.

In conclusion, the revised provisions submitted by VADEQ in 9VAC5 Chapter 10, Chapter 80, Chapter 85 and Chapter 170 meet the Federal requirements of 40 CFR 51.160 through 51.166, CAA sections 110(a)(2)(C) and 173, as well as 110 (l).

III. Proposed Action

The EPA's review of Virginia's SIP submittal indicates that the submission meets the requirements of CAA section 110(a)(2)(C), CAA section 173, and CAA section 110 and its implementing regulations 40 CFR part 51 (40 CFR 51.160 through 51.166). The EPA is proposing to approve the Commonwealth of Virginia SIP revision request submitted on July 1, 2025. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a

voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for

example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this document, the EPA proposes to include in the final EPA regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA proposes to incorporate by reference the Commonwealth of Virginia air quality regulations 9VAC5 chapter 10, Chapter 80, Chapter 85 and Chapter 170, as described in section II of this document. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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Region III.

